



MARINE MAMMAL COMMISSION

23 September 2013

Mr. P. Michael Payne, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Marine Mammal Commission (the MMC), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the U.S. Navy's application seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take marine mammals by harassment. The taking would be incidental to pile driving in association with a pier repair project in Bremerton, Washington. The authorization would be in effect from 1 December 2013 until 1 March 2014. The MMC also has reviewed the National Marine Fisheries Service's (NMFS) 13 September 2013 notice (78 Fed. Reg. 56659) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the incidental harassment authorization but require the Navy to conduct empirical in-water and in-air sound measurements during removal and installation of piles of various types and sizes and use those data to inform future incidental harassment authorization applications at Naval Base Kitsap, Bremerton (NBKB).

RATIONALE

The Navy plans to remove and install piles during repair of a pier at NBKB. The project would last for three years, but the requested incidental harassment authorization would be valid until 1 March 2014 with the Navy required to seek renewal for subsequent years. During the three-year period, the Navy would remove up to 400 12-in timber or steel fender piles using a vibratory hammer and install up to 330 (240 18-in and 90 24-in) pre-stressed concrete fender piles using an impact hammer. For the proposed incidental harassment authorization, the Navy proposes to conduct 20 days of vibratory pile removal and 45 days of impact pile installation. The Navy would use only one hammer, either vibratory or impact, at any given time. Activities would be limited to daylight hours only.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals and California sea lions. It also anticipates that any impact on the affected species and stocks would be negligible. NMFS does not anticipate any take of marine mammals by death or serious injury and believes that the potential for temporary

or permanent hearing impairment would be at the least practicable level because of the proposed mitigation and monitoring measures. Those measures include—

- (1) using no more than one vibratory hammer at any given time to remove/install piles;
- (2) using soft-start, delay, and shut-down procedures;
- (3) using delay and shut-down procedures if a Steller sea lion or any cetacean approaches the Level B harassment zone;
- (4) using four land-based and one vessel-based protected species observers to monitor the harassment zones for 15 minutes before, during, and for 30 minutes after pile-driving activities;
- (5) ensuring that no Steller sea lions are present on the floating security barrier prior to initiating pile-removal or pile-driving activities on a daily basis;
- (6) obtaining in-situ marine mammal sightings and acoustic detection data from the Orca Network and/or the Center for Whale Research on a daily basis and;
- (7) reporting injured and dead marine mammals to the Service and local stranding network using the Service's phased approach and suspending activities, if appropriate, and
- (8) submitting a final report.

Mitigation and monitoring measures

The Navy has proposed to conduct empirical in-water and in-air sound measurements of removal and installation of piles of various types and sizes using a vibratory and impact hammer for multiple projects (i.e., other Naval Base Kitsap activities in Bangor (Washington), Pt. Loma Naval Base activities in California, and Naval Station Mayport activities in Florida). However, the Navy has not proposed to conduct such measurements in this instance. Empirical sound measurement data are either limited or lacking for removal of 12-in timber and steel piles and installation of 18-in and 24-in concrete piles in Washington inland waters. In addition, the proposed activity would occur at NBKB for two additional years. Conducting empirical sound measurements during the first year of activities not only would augment the available data for the respective pile types, sizes, and locations but it also would ground truth the assumed source levels and propagation loss for the subsequent incidental harassment authorizations at NBKB. For these reasons, the MMC recommends that NMFS require the Navy to conduct empirical in-water and in-air sound measurements during removal and installation of piles of various types and sizes and use those data to inform future incidental harassment authorization applications at NBKB.

NMFS would require the Navy to implement soft-start procedures only during impact pile driving at the beginning of each work day and when impact pile-driving activities have ceased for more than 30 minutes. However, NMFS would not require soft-start procedures to be implemented for vibratory pile driving. The *Federal Register* notice indicated that soft-start procedures during vibratory pile driving at another Navy Base led to equipment failure and serious human safety concerns. NMFS did indicate in the *Federal Register* notice that, prior to issuing any subsequent incidental harassment authorizations to the Navy for pile driving activities beginning in 2014 or beyond, it would facilitate a consultation between the Navy and other operators (i.e., Washington Department of Transportation and/or California Department of Transportation) with the objective of determining whether equipment failure leading to human safety issues are inherent to the implementation of that mitigation measure or instead are associated with human error. The MMC supports that plan and encourages NMFS to brief the MMC on the consultation findings before

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processing and submitting the 2014 proposed incidental harassment authorizations for public comment in the *Federal Register* notice.

Thanks for the opportunity to provide comments on the Navy's application. Please contact me if you have questions regarding the MMC's comments and recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is fluid and cursive, with a large initial "R" and a stylized "J".

Rebecca J. Lent, Ph.D.
Executive Director